IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 706 of 1986
with
CIVIL APPLICATION No. 2745 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHAVLAL MATHURADAS PANCHOLI

Versus

VAKIL DALSUKHBHAI MOHANLAL MEHTA

Appearance:
1. Civil Revision Application No. 706 of 1986
MR JAYANT P BHATT for Petitioners-Absent
MR SURESH M SHAH for Respondents-Absent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/10/2002

ORAL JUDGEMENT

This Revision Application preferred under section

29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"] arises from the judgment and order dated 25th April, 1986 passed by the learned Assistant Judge, Jamnagar in Regular Civil Appeal No. 111 of 1985.

It appears that the respondents-plaintiffs who were the owners of the suit property being a residential house situated at Jamnagar instituted Regular Civil Suit No. 165 of 1981 in the Court of Civil Judge [JD], Jamnagar for recovery of possession of the suit premises on the grounds, inter alia, of non-payment of the rent, unlawful assignment of the suit premises, acquisition of suitable accommodation by the defendants and for arrears of rent. The learned trial Judge under the judgment and decree dated 4th May, 1985 decree the suit for possession on the grounds alleged, other than the tenant being in arrears of rent.

Feeling aggrieved, the defendants preferred Regular Appeal No. 111 of 1985 in the District Court, Jamnagar. The plaintiffs also preferred cross objection against the findings of the learned trial Judge with respect to the defendant no. 1 being tenant in arrears. The learned Assistant Judge, Jamnagar under the impugned judgment and order dated 25th April, 1986 dismissed the appeal and allowed the cross objection filed by the plaintiffs. Feeling aggrieved, the defendants have preferred the present Revision Application.

Pending this Revision Application, the petitioner-defendant no. 2 died on 7th January, 1987. However, his heirs and legal representatives have not been impleaded. Therefore, on a note filed by the learned advocate Mr. S.M Shah on 6th April, 1987, this Court [Coram : M.B Shah, J., as he then was] by Order dated 20th August, 1987 directed that the name of the petitioner no. 2 be deleted. Accordingly, the name of the petitioner no. 2 stands deleted. Since then, the petitioner no. 1 and the heirs and legal representatives of the deceased petitioner no. 2 moved Civil Application No. 994 of 1988 for recall of the above referred order dated 20th August, 1987 and for permission to substitute the heirs and legal representatives [the applicants nos. 2/1 to 2/4]. The said application, however, was not pursued for a long time. On 17th March, 1994, this Court [Coram : B.C Patel, J. as he then was] dismissed the said application for non-prosecution. The said application thus stands dismissed.

It further appears that the petitioner-defendant

no. 1 also has died pending this Revision Application on 25th December, 1990. The respondent no. 1 too has died on 6th September, 1994. Once again, the heirs and legal representatives of the deceased petitioner no. 2 have moved Civil Application No. 2745 of 2001 for impleading themselves as the heirs and legal representatives of the deceased petitioners nos. 1 & 2 and also for substituting the opponents nos. 1/1 to 1/4 as the heirs and legal representatives of the deceased respondent no. 1. The said application is still pending before this Court. This Court [Coram : Y.B Bhatt, J.] on 9th March, 2001 ordered Rule to be issued to the Opponents nos. 1/1 to 1/4 and permitted the applicants to take direct service. It appears that the direct service was not accepted by the opponent no. 1/2 and the affidavit to that effect made by the applicant no. 1/3 on 21st March, 2001 has been filed in the Court. No attempt appears to have been made to effect service upon opponents nos. 1/1, 1/3 and 1/4. Nevertheless, the learned advocate has not made any effort for fresh service to the concerned opponents. Besides, application by the said applicants who have yet not been joined as party petitioners in the above Revision Application is also not maintainable. In above view of the matter, the Revision Application has become infructuous in as much as both the writ petitioners have died and their heirs and legal representatives have not come forth.

Hence, the Revision Application is dismissed for non-prosecution. Rule is discharged. Interim stay stands vacated. Civil Application No. 2745 of 2001 also stands dismissed for non-prosecution.

[Miss R.M Doshit, J.]

Prakash*